TESTIMONY OF
TERRY BOSS
SENIOR VICE PRESIDENT -- ENVIRONMENT, SAFETY AND OPERATIONS
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

BEFORE THE
SUBCOMMITTEE ON NATIONAL PARKS, RECREATION
AND PUBLIC LANDS
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

REGARDING
H.R. 3258, TO CLARIFY BLM AND FOREST SERVICE POLICY
FOR DETERMINING FAIR MARKET VALUE OF RIGHTS-OF-WAY

April 11, 2002

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify this afternoon. I am Terry Boss, Senior Vice President for Environment, Safety and Operations for the Interstate Natural Gas Association of America (INGAA). INGAA is the trade association that represents interstate natural gas pipelines in the United States, Canada and Mexico. Our members deliver over 90 percent of the natural gas consumed in the US, via more than 200,000 miles of transmission pipeline systems.

Many of our pipelines in the Western U.S. do traverse either Bureau of Land Management (BLM) or U.S. National Forest Service (USFS) lands, and therefore we have a keen interest in how right-of-way fees are assessed by these agencies. The BLM/USFS proposals we have seen, regarding possible new fee schedules for fiber optic systems, have given us great cause for concern. While to date the proposals have dealt only with fiber optic systems, we are concerned about the precedent that might be established for other rights-of-way, including pipelines. INGAA does support the idea of paying reasonable fees for right-of-way on public lands. We believe H.R. 3258, introduced by Rep. Barbara Cubin, sets forth reasonable criteria for assessing these fees, and we urge its adoption.

IMPORTANCE OF PIPELINES

Before describing right-of-way fees, I wanted to take a moment to talk about the natural gas pipeline industry, and why our access to right-of-way is important. One of the key reasons our industry is focused on this issue is the fact that natural gas demand in this country is growing at a rapid rate, and as a result, the pipeline infrastructure will need to grow significantly in order to meet anticipated demand. Pipelines *are the only practical method* for transporting our product. Small amounts of liquefied natural gas (LNG) are imported into the U.S. via tankers from abroad[1], but in general, the natural gas we consume is produced in North America[2], and transported through pipelines from the wellhead all the way to homes, businesses

and power plants. Since natural gas represents 25 percent of all the energy consumed in the United States, pipelines are a critical part of the energy infrastructure we need to fuel our economy and provide the quality of life we expect.

The United States currently consumes about 23 Trillion cubic feet (TCF) of natural gas annually. According to a recent analysis done for the INGAA Foundation[3], that number is expected to grow to 31.3 TCF by 2015, which represents a 34 percent increase in demand in just 13 years. Much of this demand increase is being driven by the growth in gas-fired power generation. Over 90 percent of all new, installed power generation is gas-fired, and the amount of natural gas used to generate electricity is projected to increase by 106 percent between now and 2015. In addition, we are experiencing growth in industrial demand from such major consumers of natural gas as glass, fertilizer and chemical manufacturers.

All this growth translates into the urgent need for more pipeline infrastructure as well as the continued maximum use of the existing infrastructure. The current network of pipelines is simply not sufficient to meet the demands of the 30 TCF market. Our analysis estimates that the natural gas industry will require $67.9 billion of investment in pipeline transmission and storage infrastructure from 2001 to 2015 in both the United States and Canada[4]. In total, natural gas pipeline companies will need to install more than 74,000 miles of transmission pipe to meet the growing market for natural gas in the United States (49,500 miles) and Canada (25,000 miles) during this period.

This is a significant challenge for our industry under any circumstances. Because of the growth that the West has experienced in the last decade, and will continue to experience in the decades to come, our industry will have to expand in that region. Areas such as Southern California, Arizona and the Pacific Northwest will all need to construct new natural gas pipeline capacity in the next few years in order to supply fuel to new power generation facilities. It is in the West, where the vast majority of BLM/USFS land is located, that any significant change in right-of-way policy is likely to have the greatest affect on consumers.

BLM/NFS PROPOSALS

The Federal Land Policy and Management Act of 1976 (FLPMA) authorizes the BLM to issue permits for the use of rights-of-way across jurisdictional lands. The Act also gives the BLM the authority to collect the "fair market value" for the use of such lands, "using comparable commercial practices." The BLM developed criteria for determining the fair market value for these rights-of-way, and these processes have been the core of the BLM fee structure since 1987. The policy allows BLM to collect the "reasonable costs" associated with a right-of-way.

Beginning in the mid-1990s, both the USFS and the BLM began looking at establishing a new set of criteria for determining fair market value, based in part on assessing the technology or commercial value of the linear facility in question. These efforts have clearly been focused on fiber optic lines, moving beyond questions regarding the implications of land use, and looking more at the commerce associated with a right-of-way. This would represent a major policy shift, and would significantly increase both fees, and the amount of information that would be required to determine what might constitute a right-of-way's appropriate fee level. *INGAA joins with the members of TeleROW in strongly opposing these proposals.*

POTENTIAL IMPACT ON PIPELINES

When the pipeline industry reviewed the proposed changes in fees for fiber optic lines, we realized that our own industry might be next. With this in mind, the INGAA Foundation commissioned a study[5] to examine this issue, and assess the potential impact on our business. I have provided copies of the study to the Subcommittee membership, and I ask that it be made a part of today's hearing record.

First, let me provide some background. Interstate natural gas pipelines must first obtain approval from the Federal Energy Regulatory Commission (FERC) before any major construction or expansion can begin. The FERC strongly encourages pipeline operators to work with both private landowners, and with federal/state agencies, in order to resolve any questions about pipeline route, construction practices and land-use compensation. The FERC coordinates the permitting process required for the pipeline, included approval of necessary rights-of-way through federal lands. During construction, the right-of-wide may be from 75 to 100 feet wide, in order to accommodate workers and machinery, but pipeline operators are usually required to reduce the right-of-wide width and restore the area to a generally original condition once construction is complete. After construction, a pipeline right-of-way is typically 50 feet wide, and must be kept clear of trees and permanent structures primarily for safety reasons.

One of the key issues associated with new pipeline construction is working fairly and equitably with private landowners. As I mentioned, the FERC strongly encourages pipeline operators to negotiate directly with private landowners about questions of pipeline route and land-use compensation. Some of the criteria generally used to determine compensation include the diminution of property value associated with the right-of-way, and costs associated with restoring the right-of-way to a usable condition. Using the power of eminent domain, the FERC can grant condemnation authority to the pipeline if a landowner is unwilling or unable to negotiate, but more than 90 percent of pipeline right-of-way is typically obtained without using this authority.

According to our data, there are currently about 15,600 miles of interstate natural gas transmission pipeline on federal lands, or about seven percent of the total mileage in the U.S. Most of this pipeline mileage is located on BLM or USFS lands,[6] with about 28 percent of the total located on other federal lands. The annual fees to use rights-of-way through these federal lands are currently about $1.6 million for our industry. Again, let me make the point that, in general, aboveground usage of the land is not restricted by a pipeline right-of-way.

If we look at some of the potential alternatives for assessing right-of-way fees now under consideration, the natural gas pipeline industry's fees could go for $1.6 million per year to $40 - $150 million per year. This would assume that the BLM and USFS would attempt to place an economic value on the natural gas moving through our systems on an annual basis, and then tie fees to some percentage of that economic value. As you can see, these would be stunning increases, and they would by and large be borne by consumers living in Western states.

Of course, assigning an economic value to the natural gas in our pipelines would not be easy. First, the pipeline operators do not own the natural gas that moves through their pipelines. As a result of the restructuring of our industry in the 1980s and 90s, interstate pipelines no longer purchase natural gas at one end of their system, and sell it at the other end. The interstate transportation function has been "unbundled" from the gas commodity. We as pipelines are transporters only, just like a trucking company. Customers

purchase their natural gas directly from producers or marketers, and pay a set fee to transport their gas over our pipelines. Therefore, the economic value of the commodity (the natural gas itself) is no longer tied to the pipeline operator.

Second, natural gas has become a true commodity. It is traded on open markets and prices move on a daily basis. The price of natural gas can and does fluctuate significantly over the course of a single year, as we have seen in recent history. Just last year, natural gas prices moved from highs of around $10 per Mcf to lower than $2 per Mcf. Assigning an annual economic value to a commodity which experiences such daily price fluctuations would be extremely difficult, if not altogether impractical. As any experienced energy analyst would tell you, predicting natural gas prices for an upcoming year is even more difficult than predicting the weather. Building an expensive right-of-way fee schedule around such predictions would be a recipe for failure.

Let me make one final point about basing right-of-way fees on such concepts as commercial value or technology employed. We are concerned that such a fee system would put pressure on the BLM and USFS to give priority for new rights-of-way only to those entities that could pay the highest fees. We have witnessed other federal agencies -- namely the Federal Communications Commission, in the case of spectrum auctions -- push aside other worthy applications in favor of producing the greatest perceived dollars for the Treasury. Just like with radio frequency spectrum, however, there are plenty of legitimate uses for rights-of-way across federal lands, and they don't always involve applications associated with the highest fees that can be generated. A more balanced approach is needed -- one that removes the incentive to assign right-of-way only to the highest bidder, AND which fairly compensates the government.

NEED FOR LEGISLATION

As Rep. Cubin has pointed out, the proposed BLM/USFS fee structure would harm the development of telecommunications and energy infrastructure in rural areas, particularly in the West. *Consumers* in these areas would bear the costs, both in terms of higher prices and in access (or lack thereof) to critical infrastructure.

INGAA supports the development of real-world criteria for determining and collecting reasonable right-of-way fees on BLM and USFS lands. We believe the Cubin bill, H.R. 3258, represents the best approach to developing these fees. The legislation would determine a fair market value for right-of-way in question by looking at some of the same criteria we currently use in the pipeline industry for valuation of right-of-way on private land, such as the value of the land encumbered, the diminution of value associated with the right-of-way, or the costs associated with restoring the land to its original use. H.R. 3258 also puts to rest the idea of trying to determine an economic or commercial value of the commodity or service being moved over a right-of-way, and instead clarifies that any fee should be based on the value of the land in question.

CONCLUSION

As our industry expands over the next 20 years, we will be maintaining and expanding our pipeline rights-of-way on federal lands in order to serve energy consumers in the Western U.S. The members of INGAA are willing to pay their fair share of the costs associated with federal right-of-way usage, and we believe H.R. 3258 provides a fair and reasonable process for developing these fees. I want to thank you once again,

Mr. Chairman, for the opportunity to testify today, and I would be happy to answer any questions.

DISCLOSURE REQUIREMENT

Mr. Terry Boss
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Training or educational certificates:

BSME, Iowa State University, 1974
MBA, Illinois Institute of Technology, 1986

Professional license:

Professional Engineer (State of Illinois)

Employment qualifications and history:

Over twenty years working as a mechanical engineer for a natural gas pipeline operator (Natural Gas Pipeline Company of America). Involved in matters concerning pipeline safety, operations and construction. Joined the Interstate Natural Gas Association of America in 1995.

Current Office:

Senior Vice President -- Environment, Safety and Operations
Interstate Natural Gas Association of America

Disclosure:

This is to inform the Committee on Resources that neither I, nor the Interstate Natural Gas Association of America, have received any federal grant or contract since October 1, 1999.

Signed,

Terry Boss

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[1] Less than 1 percent of total natural gas consumed in the U.S. annually is imported as LNG.

[2] Eighty five percent of the natural gas consumed in the U.S is produced domestically, while about 15 percent of U.S. consumption is imported from Canada.

[3] "Pipeline and Storage Infrastructure for a 30 TFC Market -- An Updated Assessment," prepared for the INGAA Foundation by Energy and Environmental Analysis, Inc., January 2002.

[4] $47.7 billion in the U.S., and $16.8 billion in Canada.

[5] "BLM & U.S. Forest Service Rental Valuation Impact Study," prepared for the INGAA Foundation by Houston Energy Group, LLC, November, 2001.

[6] About 6840 miles on BLM lands, and 4,350 miles on NFS lands.